121-102

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1886.**

No. 1351.

WILLIAM L. ROYALL, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

**FILED MARCH 2, 1887.**

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 To the Hon. M. R. Waite, Chief Justice of the Supreme Court of the United States:

Your petitioner, Wm. L. Royall, would respectfully show that he is aggrieved by a judgement pronounced against him by the supreme court of appeals of the State of Virginia, on the 25th day of February, 1887, in a case wherein he was prosecuted by the State of Virginia for practising his profession as a lawyer without a license, after having tendered the said State's coupons in payment of his license tax.

A transcript of the record of said judgment is presented herewith, which will show that your petitioner founded his defence on the Constitution of the United States, but that he was denied the benefit of it. Your petitioner prays that the petition addressed by
2 him to said court of appeals may be treated by your honor as a petition for a writ of error to said judgment, and that a writ of error to review the same may be awarded him, and that said judgment may be reversed.

WM. L. ROYALL.

Plaintiff in error assigns for error the action of the hustings court of the city of Richmond in sustaining a demurrer to his special plea, in refusing the instructions asked by him, in refusing to set the verdict aside and grant him a new trial, and he assigns for error the action of the supreme court of appeals in refusing to award him a writ of error.

WM. L. ROYALL.

3 [Endorsed:] Royall *v.* Virginia: Petition for writ of error.

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William L. Royall, plaintiff in error, and The State of Virginia, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or
5 of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said William L. Royall, as by his

complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the 28th day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
*Clerk of the Circuit Court United States*
*for the Eastern District of Virginia.*

Allowed by—
M. R. WAITE,
*Chief Justice U. S.*

Feb. 28, 1887.

6 VIRGINIA:

IN THE CLERK'S OFFICE OF THE SUPREME COURT OF APPEALS OF VIRGINIA, AT RICHMOND, *February 28th*, 1887.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within writ is on file in my office.

Given under my hand.

GEO. K. TAYLOR, *C. C.*

7 The United States of America to the State of Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein William L. Royall is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

M. R. WAITE,
*Chief Justice U. S.*

8 I accept service of the within citation for myself and for His Excellency Fitzhugh Lee, Esq., Governor of the State of Virginia.

February 28th, 1887.

R. A. AYERS,
*Attorney General of Virginia.*

VIRGINIA:

IN THE CLERK'S OFFICE OF THE SUPREME COURT OF APPEALS OF VIRGINIA, AT RICHMOND, *February* 28, 1887.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within citation is on file in my office.

Given under my hand.

GEO. K. TAYLOR, *C. C.*

9 Know all men by these presents that we, William L. Royall and George S. Vashon, Jr., are held and firmly bound unto the State of Virginia in the full and just sum of five hundred dollars, to be paid to the said State of Virginia, — certain attorney, executors, administrators, or assigns; to which payment, well & truly to be made, we bind ourselves, o-r heirs, exec itors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately at a supreme court of appeals for the State of Virginia, in a suit depending in said court between William L. Royall, plaintiff in error, and the State of Virginia, defendant in error, a judgment was rendered against the said William L. Royall, and the said William L. Royall having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Virginia, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington

10 on the second Monday of October next:

Now, the condition of the above obligation is such that if the said William L. Royall shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

WILLIAM L. ROYALL [SEAL.]
GEORGE S. VASHON, JR. [SEAL.]

Approved by—

M. R. WAITE,
*Chief Justice U. S.*

Feb. 28th, 1887.

VIRGINIA:

IN THE CLERK'S OFFICE OF THE SUPREME COURT OF APPEALS OF VIRGINIA, [AT] RICHMOND, *February 28th*, 1887.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the original bond of which the foregoing is a true copy is on file in my office.

Given under my hand.

GEO. K. TAYLOR, *C. C.*

11 VIRGINIA:

Pleas before the supreme court of appeals of Virginia, held at the State court-house, in the city of Richmond, on Friday, February 25th, 1887.

The petition of William L. Royall for a writ of error to a judgment rendered by the hustings court of the city of Richmond on the 9th day of February, 1887, in a prosecution by the Commonwealth against the petitioner for a misdemeanor, whereby it was considered by the said court that the said William L. Royall pay a fine of fifty dollars, and the costs of said prosecution having been maturely considered, and the transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that said judgment is plainly right, doth deny the prayer of said petition.

Which petition, with the transcrip- of the record accompanying the same, is in the words and figures following, to wit:

*Petition.*

To the hon. judges of the supreme court of appeals of Virginia:

Your petitioner, Wm. L. Royall, would respectfully repre-
12 sent that he is aggrieved by a judgment of the hustings court of the city of Richmond pronounced against him on the 9th day of February, 1887. A transcrip- of the record is filed herewith and prayed to be taken as a part of this petition.

An inspection of the same will show the following facts: Your petitioner is an attorney-at-law, duly licensed and qualified to practice law in the courts of the Commonwealth of Virginia. On the 1st day of May, 1886, he tendered to the treasurer of the city of Richmond the State of Virginia's tax-receivable coupons in payment of his license tax for the ensuing year and demanded his revenue license. They were refused and his license was refused. He thereafter pursued the practice of his profession without a revenue license. An information was thereupon filed against him in the hustings court of the city of Richmond, to which he pleaded that the acts of the Assembly under which he was prosecuted were repugnant to the Constitution of the United States, so far as they applied to his case, but he was refused the benefit of his plea, was convicted, and fined fifty dollars.

Your petitioner therefore prays that a writ of error may be
13 awarded that the said judgment may be reviewed and reversed.

Petitioner, by counsel, SANDS & BRYAN.

I, Wm. H. Sands, an att'y, duly qualified to practice in the supreme court of appeals, do certify that I have examined the record in the case of the Commonwealth *vs.* Royall; that in my opinion the judgment complained of should be reviewed.

Feb'y 14th, '87.

WM. H. SANDS.

*Record.*

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

Pleas at the court-house of the city of Richmond, before the hustings court of the said city, on the 10th day of February, 1887.

Be it remembered that heretofore, to wit, at a hustings court held for the said city at the court-house, on the 9th day of February, 1887, came Samuel B. Witt, Esq., attorney for the Commonwealth, prosecuting in the said hustings court of the city of Richmond, and with the leave of the court, filed an information against
14 William L. Royal for a misdemeanor in the words and figures following, to wit:

"VIRGINIA, *City of Richmond,* } *To wit:*

In the Hustings Court for the City of Richmond.

Be it remembered that S. B. Witt, attorney for the Commonwealth in the hustings court of the city of Richmond, and who in this behalf prosecutes for the said Commonwealth in his proper person, comes into the said court on this 9th day of February, 1887, and here gives the said court to understand and be informed that William L. Royall, within the twelve months last past, in the city of Richmond and within the jurisdiction of the said hustings court of the city of Richmond, unlawfully did practice his profession as a lawyer in the courts of this Commonwealth by prosecuting and defending actions and other proceedings without having first obtained the revenue license required by law so to do, against the peace and dignity of the Commonwealth of Virginia.

S. B. WITT,
*Att'y for Comm'th.*"

15 "This day personally appeared before me, William P. Lawton, clerk of the hustings court of the city of Richmond, Wyndham R. Meredith, who made oath that the said William L. Royall within the twelve months last past, in the city of Richmond and within the jurisdiction of the said hustings court of the city of Richmond, unlawfully did practice his profession as a lawyer by

prosecuting and defending actions and other proceedings in the courts of this Commonwealth without having first obtained the revenue license required by law.

"Given under my hand this 9th day of February, 1887.

"W. P. LAWTON, *Clk.*"

And the said William L. Royall appeared in person, and waiving all notice of this proceeding by summons or otherwise, tendered to the court a special plea in writing to the said information, which is as follows:

"*Defendant's Plea.*

Hustings Court of the City of Richmond.

COMMONWEALTH OF VIRGINIA *against* WILLIAM L. ROYALL.

And for a plea in this behalf the said William L. Royall
16 comes & says that more more than fifteen years back he was duly examined by judges of the State of Virginia, and found by them qualified to practice law as an attorney-at-law according to the mode and form of the statute law of Virginia; that having complied with all the other requirements of the statute law of said State, he was duly licensed to practice law in all the courts in said State according to the statute law of said State, and during all the time since then he has been actively engaged in practicing his said profession as an attorney-at-law; that he has duly & regularly paid to the State of Virginia all license taxes assessed upon his said business as an attorney-at-law each year since he commenced practicing his said profession; that on the first day of May, 1886, he tendered to Samuel C. Greenhow, who is treasurer of the city of Richmond, Virginia, one coupon for $15 and ten dollars in United States Treasury notes in payment of his license tax as an attorney-at-law for the ensuing year (all his license tax up to that date having been paid in full), and also seventy-five cents in silver coin for the fee of the commissioner of the revenue; that said coupon was cut from a bond issued by the State of Virginia under the provisions of an act
17 of the General Assembly of the State of Virginia approved March 30th, 1871, entitled "An act to provide for the funding and payment of the public debt; that it was overdue and past maturity and bore upon its face the contract of the State of Virginia that it should be received in payment of all taxes, debts, and demands due to the said State; that when he made said tender he demanded of said Greenhow a certificate in writing stating that he had deposited with him said coupon and money, but the said Greenhow refused to receive said coupon and money except for verification and identification, as provided for by an act of the General Assembly of the State of Virginia approved March 4th, 1886, which is chapter 415 of the acts of 1885–1886, and he refused to give to defendant the certificate demanded or any other certificate until said coupon had been identified and verified, according to the provisions of chapter 415 of the acts of 1885–'86, hereinbefore

referred to, he declaring that he would give defendant said
18 certificate after it should have been so verified, or, if defendant would pay in lawful money, he would receive said coupon for verification, and upon its verification he would return said money & receive said coupon as payment of said tax; that said Greenhow refused to receive said coupon and money as payment of said license tax & refused to give defendant the certificate demanded, because said last-mentioned act forbade him so to do; that said act is repugnant to section ten of article one of the Constitution of the United States; that thereupon the defendant made the affidavit hereto annexed, marked "A," and presented it to R. B. Munford, who is the commissioner of the revenue for the city of Richmond, and demanded of him a revenue license as an attorney-at-law, and at the same time he presented to the said Munford the paper hereto attached, marked "B," and at the same time he offered to pay the said Munford any & all charges that he was entitled to receive
19 before issuing said license, but the said Munford refused to issue to defendant a license as an attorney-at-law; that thereafter defendant practiced his profession of attorney-at-law without a revenue license, but after having made the efforts hereinbefore described to obtain one, but not before; and this he is ready to verify. Wherefore he prays judgment, &c.

W. L. ROYALL."

The following is the affidavit referred to in the foregoing plea and marked "A."

"A.

*Affidavit.*

STATE OF VIRGINIA, *City of Richmond*, } *To wit:*

This day W. L. Royall personally appeared before me, Alex. B. Guigon, a notary public in and for the city aforesaid, and made oath that on the 1st day of May, 1886, he tendered to Sam'l C. Greenhow, through his deputy, S. G. Tinsley, coupons for the sum of $15, and $10.75 in lawful money of the United States, that the said coupons were cut from bonds of the Commonwealth of Virginia, issued under the provision of an act of her General Assembly, ap-
20 proved March 30th, 1871, entitled 'An act to provide for the funding and payment of the public debt,' that the same were overdue and past maturity, and each bore upon its face the contract of the State of Virginia that it should be received in payment of all taxes, debts, demands, and dues due to said State; that the said Samuel C. Greenhow is the treasurer of the city of Richmond; that affiant made said tender for the purpose of procuring a license from May 1st, 1886, to April 30th, 1887, for said W. L. Royall, as an attorney-at-law, and at the time of said tender he demanded of said Samuel C. Greenhow a certificate in writing stating that he had deposited said coupons and money with him for the purpose of obtaining a license to conduct the business of an attorney-at-law in

the State of Virginia, but that the said Greenhow refused to receive said coupons and money, & refused to give him the said certificate or any other certificate.

Given under my hand this 1st day of May, 1886.

ALEX. B. GUIGON, *N. P.*"

The paper marked "B," referred to in the said plea, is as follows:

"(B.)

*Application for License.*

To R. B. Munford, commissioner of the revenue of the city of Richmond:

21 I hereby make application to you for license to practice law. I propose to do business as an att'y-at-law. My residence is Richmond, Va. I propose to conduct said business in the city of Richmond and State of Virginia, and the amount of assessment prescribed by law as a condition precedent to issuing said license is $25 and .75 com'r's fee; I propose to do said business in the name of—

W. L. ROYALL."

And the Commonwealth, by her attorney, demurred to the said plea, as follows:

"The Commonwealth of Virginia, by her proper officer, comes and says that the said plea is not sufficient in law.

WYNDHAM R. MEREDITH,
*Ass. Commonwealth's Attorney.*"

And the defendant joined in the said demurrer as follows:

"The defendant joins in the said demurrer.

WM. L. ROYALL."

And the matters of law arising upon the said demurrer being argued by counsel, the said demurrer was sustained by the court. The defendant, being then required to plead to the said information, pleaded not guilty to the same; and thereupon a jury, to wit, Louis Nachman, E. C. Minor, Joseph Heppert, Stanhope Bulling,
22 Peter Martin, C. C. Tinsley, Louis Bromm, William A. Talman, William A. Clarke, E. D. Eacho, John R. Redford, and Richard J. Bass, were sworn the truth to speak upon the issue joined, and having heard the evidence returned a verdict in these words: "We, the jury, find the prisoner guilty, and assess his fine at fifty dollars." The defendant thereupon moved the court to set aside the said verdict, on the ground that the same is contrary to the law and the evidence, and grant him a new trial; which motion the court overruled. Whereupon it is considered by the court that the said William L. Royall pay and satisfy the said fine of fifty dollars and the costs of this prosecution.

MEMORANDUM.—During the progress of the trial of this cause, this day the defendant excepted to two decisions of the court given against him and tendered his two several bills of exceptions, which were received, signed and sealed by the court and ordered to be made parts of the record hereof.

And now, at this day, to wit, at the same hustings court, continued by adjournment and held for the said city at the
23 court-house, on the 10th day of February, 1887 (being the same day and year first hereinbefore written), the said William L. Royall again appeared, as well as the Commonwealth, by its attorney, and thereupon the said William L. Royall moved the court to make a certificate, which appears in full in a paper marked "A," filed with the papers in this cause, and now made a part of the record hereof, which the court declines to do, for reasons stated in writing, marked "B," filed with the papers in this cause, and also made a part of the record herein. The said William Royall then tendered to the court a memorandum for a bill of exceptions to its refusul to make such certificate (marked "C," filed with the papers of this cause, and also made a part of the record), and asked that the said bill of exceptions be received, signed, and sealed by the court and reserved to him; which the court refused to do, for the reason that all of the proceedings in this behalf are made to appear upon the face of the record by this order.

And it is ordered that the clerk of this court forthwith issue a *capias pro fine* against the said William L. Royall; wherefore the said William L. Royall paid the said fine of fifty dollars,
24 together with the costs of this prosecution, to the clerk in court, and is discharged.

The papers marked "A," "B," & "C," referred to in the above order of court, are as follows:

"(A.)

COMMONWEALTH v. WILLIAM L. ROYALL.

And at the instance of the defendant the court certifies that in the record and at the trial of this cause there was drawn in question the validity of chapter 415 of the acts of 1885 and 1886 and section 90 of chapter 450 of the acts 1883-'84, upon the ground that so far as they undertake to inflict punishment upon the defendant for practising his profession as an attorney-at-law without a license, after having tendered the States tax-receivable coupons in payment of his license tax, they are repugnant to section ten of article one of the Constitution of the United States. But the court being of opinion that the defendant had no right to practice the profession of an attorney-at-law without a license, after he had tendered payment of his license tax in coupons, decided and gave judgment that said section and said act are not repugnant to said Constitution, and it decided
25 and gave judgment in favor of the validity of said section and said act."

"B.

*Opinion of the Court.*

In the Hustings Court of the City of Richmond, the 10th day of Feb'ry, 1887.

COMMONWEALTH *v.* ROYALL.

I decline to certify that a Federal question is involved in this prosecution. William L. Royall has been guilty of a flagrant violation of what has been declared by the supreme court of Virginia to be the law of this Commonwealth; he has been properly convicted; he stands upon the footing of any other citizen after conviction. All exceptions taken by him while on trial have been duly enrolled. The record speaks for itself, and any appellate tribunal taking jurisdiction in the premises will have before it precisely what appeared in this court.

The clerk is directed to forthwith issue a *capias pro fine.*

ADDISON L. HOLLADAY."

"C.

COMMONWEALTH *v.* WILLIAM L. ROYALL.

26 Be it remembered that after the final judgment in this cause had been entered the defendant moved the court to enter the following certificate on the record:

COMMONWEALTH *v.* WILLIAM L. ROYALL.

And at the instance of the defendant the court certifies that in the record and at the trial of this cause there was drawn in question the validity of chapter 415 of the acts of 1885 & 1886, and section 90 of chapter 450 of the acts of 1883–'84, upon the ground that so far as they undertake to inflict punishment upon the defendant for practicing his profession as an attorney-at-law without a license, after having tendered the State's tax-receivable coupons in payment of his license tax, they are repugnant to section ten of article one of the Constitution of the United States; but the court, being of opinion that the defendant had no right to practice the profession of an attorney-at-law without a license after he had tendered payment of his license-tax in coupons, decided and gave judgment that said section and said act are not repugnant to said Constitution, and it decided and gave judgment in favor of the validity of said section and said act, but the court overruled the said
27 motion and refused to enter the same; to which action of the court the defendant excepted, and tendered this his third bill of exceptions, which is signed, sealed, & made a part of the record.

—— ——. [SEAL.]"

MEMORANDUM.—The two bills of exceptions to two decisions of the court given against the defendant and tendered by him to the court, and received, signed, and sealed by the court during the progress of the trial of this cause, as heretofore mentioned, and ordered to be made parts of the record hereof, are in the words and figures following, to wit:

"*First Bill of Exceptions.*

COMMONWEALTH OF VIRGINIA *against* WILLIAM L. ROYALL.

Be it remembered that on the trial of this cause, when the same was submitted to the jury, the defendant requested the court to give to the jury the following instructions: 'If the jury believe from the evidence that the defendant paid his revenue license taxes up to April 30th, 1886, and that on the 1st day of May, 1886, he tendered to the treasurer of the city of Richmond a coupon for $15, issued by the State of Virginia under the provisions of the act of March 30th, 1871, which coupon, by the provisions of said act, was to be
28 receivable for all taxes, debts, and demands due to said State, and that the same was overdue and past maturity, and ten dollars and seventy-five cents, in lawful money of the United States, in payment of his license tax as an attorney-at-law for the year then ensuing, and that said tender was refused by said treasurer, then they are instructed that the defendant had a right to practice his profession without a license, notwithstanding the act of the General Assembly of March 4th, 1886, which act the court instructs the jury is repugnant to section ten of article one of the Constitution of the United States in so far as it attempts to suspend the effect of a tender of said State's coupons whilst the process of identification and verification provided for therein is going on, and that they must, therefore, find the defendant not guilty;' but the court refused to give said instructions asked for; to which action of the court refusing to give said instructions the defendant excepted, and tendered this his first bill of exceptions, which is signed, sealed, & made part of the record.

ADDISON L. HOLLADAY [SEAL.]

"*Second Bill of Exceptions.*

COMMONWEALTH OF VIRGINIA *against* WILLIAM L. ROYALL.

29 Be it remembered that upon the trial of this cause the same was submitted to the jury on the following agreed statement of facts, to wit:

It is admitted as evidence in this case that the defendant has been duly licensed to practice law as an attorney-at-law under the laws of the State of Virginia for more than fifteen years last past, that he has paid all license taxes assessed upon his said profession up to May 1st, 1886; that on the first day of May, 1886, he tendered to the treasurer of the city of Richmond a coupon issued by the State of Virginia under the provisions of an act of her General

Assembly approved March 30th, 1871, for the sum of $15, and $10.75 lawful money of the United States, in payment of his license tax for the ensuing year, and demanded his license from the proper officer; that said coupon bore upon its face the contract of the State of Virginia that it should be received in payment of all taxes, debts, and demands due to her, and that the same was overdue and past maturity; that said tender was refused, and said officer refused to give defendant a revenue license; that said tender was refused as payment of the license tax because chapter 415 of the acts of 1885–'86, referred to in defendant's special plea, forbade the treasurer to receive the said coupon except for identification and
30 verification; that thereupon, and after said tender and demand, the defendant practiced his profession without a revenue license, but not before. It is further agreed that the license tax on the defendant, as an attorney-at-law, is twenty-five dollars ($25).

It is further agreed that when defendant made said tender said treasurer offered to receive said coupons for identification and verification, according to the provisions of chapter 415 of the acts of 1885–'86, and upon the identification and verification thereof, offered to issue to said defendant the proper certificate, or, if defendant would pay said license tax in current money, he offered to issue said certificate at once, and upon proof of the genuineness of said coupon, as provided for by said act, to return to said defendant his money.

And after the jury had heard the said agreement of facts and considered the same, they found the defendant guilty.

Whereupon the defendant moved the court to set aside the verdict of the jury upon the ground that it was contrary to the law and the evidence. But the court overruled the defendant's said motion; to which action of the court the defendant excepted and
31 tendered this his second bill of exceptions, which is signed, sealed; and made a part of the record.

ADDISON L. HOLLADAY. [SEAL.]

A transcript from the record.

Teste: W. P. LAWTON, *Clk.*"

A transcript of the record.

Teste: GEO. K. TAYLOR, *C. C.*

Fee for transcript, $4.00.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true transcript of the record and proceedings upon a petition for a writ of error lately made to the supreme court of appeals of Virginia, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof I hereto set my hand and annex the seal of the said court this 28th day of February, 1887.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

GEO. K. TAYLOR,

*Clerk Supreme Court of Appeals of Virginia, at Richmond.*

Endorsed on cover: Virginia supreme court of appeals. No. 1351. William L. Royall, plaintiff in error, *vs.* The State of Virginia. Filed March 2, 1887.

121-102

# SUPREME COURT OF THE UNITED STATES.

WILLIAM L. ROYALL

*vs.*

THE STATE OF VIRGINIA.

## Brief of William L. Royall, for Plaintiff in Error.

### STATEMENT OF THE CASE.

The plaintiff in error is an attorney at law. On the 1st day of May, 1886, he tendered the treasurer of Richmond city the State's coupons in payment of his license tax for the ensuing year and demanded his license. The coupons were refused and a license was refused. He thereupon proceeded with the practice of his profession without a license. He was prosecuted for this in the Hustings Court of the city of Richmond, convicted, and fined. He applied to the Court of Appeals for a writ of error, which was refused him, and thereupon he brought his case here.

The action of the Hustings Court in sustaining a demurrer to his special plea, its refusal to give the instructions asked for, and its refusal to set aside the verdict, are assigned as error. The action of the Court of Appeals in refusing him a writ of error and

in failing to reverse the judgment are also assigned as error.

In *Chaffin* vs. *Taylor*, 114 U. S. R., the court said, at page 310: "The judgment of the Supreme Court of Appeals is, in substance, a judgment affirming the judgment of the Circuit Court of Henrico county, and is, therefore, reviewable upon this writ of error by this court, the case being one which arises under the Constitution of the United States" — *Williams* vs. *Bruffy*, 102 U. S., 248.

## Argument.

The act that is called in question is set out in my brief in *Carper, Jailor*, vs. *Fitzgerald*, at page 23. There is nothing to argue in this case. The questions involved in it were definitely passed upon by this court in the cases of *Royall* vs. *Virginia*, 116 U. S. R., 572, and in *Chaffin* vs. *Taylor*, *ib.*, 567. The latter case is this exactly.

The court will find the opinion of the Court of Appeals of Virginia, setting out the reasons why they think the act a constitutional one, in Fitzgerald's petition for a writ of *habeas corpus*, in *Carper, Jailor*, vs. *Fitzgerald*, heard along with this case.

WILLIAM L. ROYALL,
*for Plaintiff in Error.*

121-102

IN THE SUPREME COURT OF THE UNITED STATES

WM. L. ROYALL
*vs.*
THE STATE OF VIRGINIA.

## Brief of R. A Ayers, Attorney General of Virginia.

This case involves the same questions discussed in my brief filed in the case of H. A. Carper, jailor of Pulaski County, Va., against R. L. Fitzgerald, and I understand the two cases will be heard together.

The matter pertinent to this case will be found from the third paragraph on page 18 to the end of the brief, and will not be repeated here.

In the case of *Rogall vs. Virginia*, 116 U. S., 572, which was similar to this, the mode of prosecution being exactly the same, it was held that "as the sum demanded for the license is a tax, the provision for the punishment of one who pursues his profession without a license, is a part of the revenue system of the State, and is a means merely of enforcing payment of the tax itself, or of a penalty for not paying it."

It is legally equivalent to a civil action of debt upon the statute, and its substantial character is not changed by calling the default a misdemeanor, and providing for its prosecution by information.

The present case, therefore stands precisely, so far as the constitutional questions arising in it are af-

fected, as if it were a civil action in which the Commonwealth of Virginia was plaintiff, seeking to recover the amount due on account of the tax and penalty.

In that aspect, no one would doubt that it would be a perfect defense that the defendant had previously paid the demand, or, what we have held to be legally equivalent, had tendered the amount in the coupons of the State, receivable in payment by an irrepealable contract, but which the appointed authorities of the State had wrongfully refused to receive. Such, as we conceive it, is the present case.

The State of Virginia has sued the defendant for the recovery of a tax which he offered to pay when it became due in its own coupons, which, by the law of its contract were receivable in satisfaction of the demand. Certainly the State cannot be permitted to recover against its own contract from the other contracting party, as to whom the only default alleged is that he has performed the contract on his part.

Treating the prosecution as above interpreted, I have discussed the question, the same principle being involved in both cases, from the standpoint of the State, that coupons are set-offs or counter demands, and the real and substantial effect of sustaining the defense, is to pronounce judgment against her for the amount of the coupons tendered.

R. A. AYERS,
*Att'y Gen. of Va.*